

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2004-000501

08/23/2006

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

CITY OF PEORIA

STEPHEN M KEMP

v.

KORITA FOOD, INC., et al.

SCOTT A KLUNDT
JEFFREY A MCKEE
EDUARDO GONZALEZ
20372 N. 55TH DRIVE
GLENDALE AZ 85308

MINUTE ENTRY

A clerical error having occurred,

IT IS ORDERED correcting the August 18, 2006 minute entry to include an endorsement to Eduardo Gonzalez. A copy of said minute entry is included.

2:05 p.m. This is the time set for evidentiary hearing. Plaintiff is represented by counsel, Stephen Kemp. Garnishees Masa Men, LLC, Grupo Pizza De Arizona, LLC and Donuts to Dollars, LLC dba Panaderia Taza are represented by counsel, Scott Klundt. Judgment Debtor, Eduardo Gonzalez is present on his own behalf.

A record of the proceedings is made by CD/videotape in lieu of a court reporter.

LET THE RECORD REFLECT the Court makes a call to listed counsel for the Judgment Debtor, Jeffrey McKee to confirm that he would not be present at today's hearing and that Eduardo Gonzalez would not be represented by counsel.

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Claims of the case discussed.

Eduardo Gonzalez is sworn and testifies.

Plaintiff's exhibit 1 is marked for identification.

Counsel for Plaintiff makes an oral request that Tony Tercero be allowed to testify.

Argument presented.

The Court advises counsel and the parties that Mr. Tercero will be allowed to testify if he is willing to testify voluntarily. A short recess will be taken to allow counsel for the Garnishees to question Mr. Tercero.

2:45 p.m. Court stands at recess.

3:05 p.m. Court reconvenes with the parties and respective counsel present.

A record of the proceedings is made by CD/videotape in lieu of a court reporter.

Plaintiff's exhibit 1 is received in evidence.

Plaintiff rests.

Antonio Tercero is sworn and testifies.

Todd Belfer is sworn and testifies.

Garnishees rest.

Closing statements presented.

IT IS ORDERED taking this matter under advisement.

3:57 p.m. Matter concludes.

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LATER:

UNDER ADVISEMENT RULING

This matter having been under advisement and the Court having considered the evidence presented at the garnishment hearing, the Court finds and rules as follows.

Stovall v. Williams, 100 Ariz. 1 (1966), allows the Court to examine the basis for the alleged creditor-debtor relationship between Gonzales and the individuals and entities collectively referred to as “Grupo.” That relationship depends on whether there was a breach of the Settlement Agreement and Release.

Grupo asserts that Gonzales breached the Settlement Agreement in two ways, first by opening a coffee shop selling Café Combate inside the Phoenix Ranch Market on Roosevelt Street, and second by opening a Pizza Patrón franchise in Las Vegas, which included receiving confidential information from Pizza Patrón headquarters, or by using confidential information as to both. The Court finds the former assertion is founded on nothing more than speculation based on rumor; Grupo’s principals heard that Gonzales’s friend Tercero had opened a coffee shop and that Gonzales was somehow involved, and immediately concluded that Gonzales must have used confidential information. On that basis alone, Garnishee’s objection is not well founded. The testimony of Gonzales and Tercero that Gonzales had no role in developing or operating the coffee shop is mere surplusage, confirming that there is no basis on which to find a breach of the Settlement Agreement. Even if Gonzales had been involved, there would be insufficient basis on which to find a violation of Paragraph 5. The concept of attracting a Mexican-American clientele by selling the most popular coffee in Mexico is sufficiently obvious that no presumption of a proprietary nature can attach, and the bare fact of running a coffee shop that purchases from the manufacturer of Café Combate implies no use of “information or relationships which pertain peculiarly to the employer.” *Valley Medical Specialists v. Farber*, 194 Ariz. 363, 367 ¶ 12 (1999).

The other allegation involves the decision by Pizza Patrón to award Gonzales a franchise in Las Vegas. The Settlement Agreement contains no covenant not to compete; even if it had, extending the restricted territory hundreds of miles to Nevada, where Gonzales’s restaurant would not compete for Phoenix area pizza customers, would be unreasonable on its face. *See* RESTATEMENT (2D) OF CONTRACTS § 188, comment f, illustration 2. Grupo can claim no proprietary rights in Pizza Patrón’s franchisee training, so Gonzales was not barred from receiving such training from his new franchisor.

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The Court concludes that Defendant-Judgment Debtor Gonzales did not breach the Settlement Agreement, and that Garnishees Grupo are bound by its terms.

Therefore, IT IS ORDERED:

1. Denying Garnishees' Objection to Application for Judgment Against Garnishee, and
2. Approving Plaintiff's form of garnishment judgment as amended and signed August 21, 2006.

FILED: Trial/hearing Worksheet; Exhibit Worksheet